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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,857	02/02/1999	VLADIMIR POGREBINSKY	P-2163-US	9235
21884	7590	03/14/2006	EXAMINER	
WELSH & FLAXMAN LLC 2000 DUKE STREET, SUITE 100 ALEXANDRIA, VA 22314				RYMAN, DANIEL J
			ART UNIT	PAPER NUMBER
				2665

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/241,857	POGREBINSKY, VLADIMIR	
	Examiner	Art Unit	
	Daniel J. Ryman	2665	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 February 2006.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4, 6 and 8-35 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-4, 6 and 8-35 is/are rejected.

7) Claim(s) 2, 6 and 21-28 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's arguments with respect to claims 1-4, 6, and 8-35 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claim 2 is objected to because of the following informalities: in line 1, "sample includes" should be "sample is" since the phrase "at least one media sample" inherently includes "a plurality of media samples" rendering the "includes" language redundant and non-limiting. In line 2, "in at least one frame" should be "in said at least one frame" since "at least one frame" now has antecedent basis in claim 1. Appropriate correction is required.

3. Claim 6 is objected to because of the following informalities: in line 1, "at least one frame includes" should be "at least one frame is" since the phrase "at least one frame" inherently includes "at least two frames" rendering the "includes" language redundant and non-limiting. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-4, 6, 8-28, and 31-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

6. Claims 1, 12, 17, 20, and 31 have been amended to include the following limitations: “providing at least two predefined network states . . . [by] analyzing said network to identify a delay based upon a media communication [and] categorizing said network into at least two states upon analyzing said network.” This amendment tracks the following language in the specification, detailing how the Table of Figure 4 was constructed: “This Table (Fig. 4) was obtained by analyzing the network in accordance with a received audio communication, characterizing the network into at least two states, and for each network state, packaging a number of media frames in accordance with the network state.” Specification, page 8, line 32 to page 9, line 2. But while the amendments to the claims are directed to “providing at least two predefined network states,” the language in the Specification is directed to defining “a set of constructing parameters for constructing [a] packet,” such as encoding rate and redundancy, for each network state (regular, loss, delay, and loss + delay). Specification, page 8, lines 21-22. Therefore, since the claimed steps in the Specification are used to define the constructing parameters for each network state, and not to provide the network states themselves, “providing at least two network states” through the given steps is not enabled by the Specification.

7. In addition, Applicant alters the language of the Application when amending the claims, which changes the scope of what is claimed from what is disclosed. For instance, Applicant changes “analyzing the network in accordance with a received audio communication” to “analyzing said network to identify a delay based upon a media communication.” As such, Applicant has not disclosed using anything other than an “audio” packet in the Specification. Therefore, all other types of media are not enabled. Also, Applicant did not disclose analyzing

the network based upon a delay. Therefore, analyzing the network to identify a delay is not enabled.

8. Further, Applicant recites in claims 1, 12, 17, 20, and 31 “categorizing said network into at least two states upon analyzing said network, said at least two states corresponding to said at least two predefined networks states.” In the Specification, it is disclosed that “This Table (Fig. 4) was obtained by . . . characterizing the network into at least two states.” Specification, page 8, line 32 to page 9, line 2. The Specification does not appear to disclose having the “at least two states . . . correspond[] to said at least two predefined network states.” If anything, the Specification suggests that the network is divided into the “predefined states,” not “states corresponding to the predefined states.” As such, “categorizing said network into at least states upon analyzing said network, said at least two states corresponding to said at least two predefined networks states” is not enabled.

9. Additionally, claims 1 and 20 further require “packaging at least one media frame according to each of said at least two predefined network states.” The specification requires the following: “This Table (Fig. 4) was obtained by . . . packaging a number of media frames in accordance with the network state.” Specification, page 8, line 32 to page 9, line 2. Thus, the specification calls for packaging a number of frames for each network state while the claim requires packaging a single frame according to multiple states. As such, “packaging at least one media frame according to each of said at least two predefined network states” is not enabled by the specification.

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 1-4, 6, 8-28, and 31-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claims 1, 12, 17, 20, and 31 have been amended to include the following limitations: “providing at least two predefined network states . . . [by] analyzing said network to identify a delay based upon a media communication [and] categorizing said network into at least two states upon analyzing said network.” This amendment tracks the following language in the specification, detailing how the Table of Figure 4 was constructed: “This Table (Fig. 4) was obtained by analyzing the network in accordance with a received audio communication, characterizing the network into at least two states, and for each network state, packaging a number of media frames in accordance with the network state.” Specification, page 8, line 32 to page 9, line 2. But while the amendments to the claims are directed to “providing at least two predefined network states,” the language in the Specification is directed to defining “a set of constructing parameters for constructing [a] packet,” such as encoding rate and redundancy, for each network state (regular, loss, delay, and loss + delay). Specification, page 8, lines 21-22. Therefore, since the claimed steps define the creation of constructing parameters for each network state, and not to provide the network states themselves, it is unclear how these steps can be used for providing the network states. Simply, the Specification seems to disclose that the steps added by amendment define “constructing parameters for each network state,” while the claims disclose that these same steps define “providing predefined network states,” where “constructing parameters” and “providing predefined network states” are not equivalent. In order to overcome this rejection, Applicant needs to clearly delineate whether the given steps are for

“constructing parameters for each network state” or for “providing predefined network states.” If for the former, then Applicant should amend the claims to read accordingly. If the latter, Applicant should add in further limitations to clearly distinguish these steps from the “constructing parameters for each network state” as defined in the Specification.

13. In addition, in claims 1, 12, 17, 20, and 31, “providing at least two predefined network states” requires that the network states be defined and this definition be passed to the system in this step. However, none of the steps added by amendment, which are intended to further define the phrase “providing at least two predefined network states,” actually provide the predefined network states. The closest step, “categorizing said network into at least two states upon analyzing said network, said at least two states corresponding to said at least two predefined network states,” requires states that only “correspond to” predefined network states such that it is unclear how the predefined network states are ever provided. Simply, if the given states only correspond to the predefined network states, then the predefined network states are apparently never provided, as required by the step, “providing at least two predefined network states.” In order to overcome this rejection, Applicant should add in additional steps indicating how the network steps are provided.

14. In view of the foregoing, Examiner is unsure of the scope of the claims since the given language is defined by the Specification as disclosing “constructing parameters for each network state” rather than “providing predefined network states.” In addition, Examiner is unsure of the scope of the claims since the given language is intended to define how to “provide at least two predefined network states”; however, no use of a predefined network state is ever required.

***Claim Rejections - 35 USC § 103***

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer et al. (USPN 6,370,163), of record.

17. Regarding claim 29, Shaffer discloses a method for transmitting at least one packet over a packet IP switch network comprising the steps of: monitoring said network (sending test packet) for determining the available bandwidth (network load) for transmission over said network by identifying a delay based upon an audio communication sent and received (col. 2, lines 19-30 and col. 5, lines 22-24); and determining a quality state for transmission (long/short delays), said quality state corresponding to said detected available bandwidth (col. 2, lines 19-30 and col. 5, lines 22-24); adjusting bit rate for transmission (adjusting packet size) in accordance with said determined quality state (col. 6, lines 1-18) where longer packets offer a greater bit rate (“amount of voice information capable of being compressed and packetized within [a given interval]”); and transmitting said at least one packet over said network in accordance with the adjusted bit rate (col. 2, lines 19-30).

Shaffer does not expressly disclose that the delay is based upon a multimedia communication sent and received. Rather, Shaffer discloses that the delay is based on a voice communication sent and received (col. 2, lines 19-30 and col. 5, lines 22-24). However, Shaffer further discloses that video and audio packets are affected by end-to-end delays (col. 1, lines 37-

40). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to base the delay upon a multimedia communication sent and received since both video and audio packets are affected by end-to-end delays.

18. Regarding claim 30, Shaffer discloses that said step of adjusting bit rate includes the step of increasing bit rate for transmission with increased quality upon detection of increased available bandwidth (col. 7, lines 46-67).

***Allowable Subject Matter***

19. Claims 21-28 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims. While the prior art discloses a plurality of network states, the prior art does not disclose or fairly suggest selecting the network quality states from the group *consisting of*: not sufficient quality; sufficient quality; and high quality.

***Conclusion***

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pauls et al. (USPN 6,920,150) see entire document which pertains to adaptive communications transcoding and error control. Vargo et al. (USPN 6,356,545) see entire document which pertains to a dynamically varying codec.

21. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Ryman whose telephone number is (571)272-3152. The examiner can normally be reached on Mon.-Fri. 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Huy Vu can be reached on (571)272-3155. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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